

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**SPECTRUM NEWS NY1
Employer**

and

Case No. 02-RC-212606

**INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL 1212
Petitioner**

**ORDER DIRECTING HEARING AND
NOTICE OF HEARING**

Upon a petition filed by the International Brotherhood of Electrical Workers Local 1212 (“Petitioner”) on January 8, 2018¹ and pursuant to the Stipulated Election Agreement signed by the Petitioner, Spectrum News NY1 (“Employer”) and approved by the Regional Director on January 11, a secret-ballot election was held on January 31, among the employees in the following unit:

All full-time, regular part-time, and per diem broadcast engineers and technicians employed by the employer in its Technical Operations Department, including, but not limited to engineers and technicians employed in titles of Studio Operations personnel, Technical Directors, Engineer Assistants, Media Ingest Editors, Broadcast Engineers, Tape Librarians, Master Control Operators, Programming Operations Operators, Truck Operators/Photographers, and System Engineers; as well as Video Editors, and Videographers in the employer’s Local News Content Department., but excluding all other employees, casual employees, clerical and office workers, guards, and professional employees, and supervisors as defined by the Act.

The Tally of Ballots made available to the parties at the conclusion of the election

¹ All dates are 2018 unless otherwise noted.

pursuant to the Board's Rules and Regulations showed the following results:

Approximate number of eligible voters: 71
Number of void ballots: 0
Number of votes cast for Petitioner: 28
Number of votes cast against participating labor organizations: 40
Number of valid votes counted: 68
Number of challenged ballots: 1
Number of valid votes counted plus challenged ballots: 69

Challenges were not sufficient in number to affect the results of the election.
A majority of valid votes counted plus challenged ballots were not cast for the
Petitioner.

The Petitioner timely filed six objections to conduct affecting the results of the above-described election and its offer of proof in support of those objections. A copy of the Petitioner's objections is attached as Exhibit A. Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned caused an investigation of the objections to be conducted concerning the Petitioner's objections. I address each Objection below and have grouped together those that raise related allegations and/or derive from similar proffered facts.

Objection Nos. 1, 2, and 5

In support of these objections, the Petitioner submitted an offer of proof summarizing the evidence it intends to present at hearing. In its offer of proof, Petitioner identifies employees who can provide testimony to establish that the Employer's Manager, Sherman, engaged in the conduct described in the Objections. Based on a preliminary investigation, I have concluded that the evidence described in the offer of proof submitted by the Petitioner accompanying its objections, if true, may warrant setting aside the election. Inasmuch as these objections raise substantial and material issues of fact that can best be resolved on the basis of record testimony taken at a hearing, I direct that a hearing be held with respect to the issues raised by Objections 1, 2, and 5.

Objection No. 3

In this Objection the Petitioner asserts that employee Russell was terminated on February 2, two days after the date of the election.² The petition was filed on January 8 and the election was on January 31. The critical period begins on and includes the date of the filing of the petition and extends through the date of the election. *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962). Since the termination is asserted to have occurred outside the relevant time period for considering objectionable conduct, I must overrule this Objection. . *Goodyear Tire and Rubber Company*, supra.

Objection No. 4

With respect to Petitioner's Objection No. 4, the Petitioner asserts that it possess audio recordings containing various statements. However, none of the witnesses named in the offer of proof attribute to the Employer the statements alleged to be contained on these audio recordings – that the Employer stated it would not agree to any concessions in bargaining; that once it reached impasse it could implement any contract it wanted; or that because the Petitioner filed a petition the Employer had to provide employees' personal information to the Petitioner. Thus, it appears that the Petitioner may not have technically satisfied the Board's requirement that objections must be accompanied with a sufficient offer of proof. 29 CFR 102.69(a); see also *Aramark Uniform and Career Apparel, LLC*, 364 NLRB No. 120, slip op. at 1-2 (2016) (denying review where a party filed timely objections, but did not timely file necessary offers of proof). The description on the face of the objection alone is insufficient to evaluate whether the statements were directed at employees eligible to vote and occurred during the critical period.

² I note that on February 8, the Petitioner filed an unfair labor practice charge in Case 02-CA-214564 alleging that the Employer terminated Russell in violation of Section 8(a)(1) and (3) of the Act. The investigation of that charge is in progress.

Further, with regard to the statements concerning impasse and the requirement to provide employees' personal information to the Petitioner, alleged as misstatements of law, the Board will "no longer probe into the truth or falsity of the parties' campaign statements. *Midland National Life Insurance Co.*, 263 NLRB 127, 130 (1982). Nor is a misstatement of the law objectionable conduct. See e.g. *John W. Galbreath & Co.*, 288 NLRB 876, 877 (1988) (wherein the Board overruled objections to an election where an employer stated that an employee who is expelled from the union could be fired if a union-security agreement is in effect.) *Midland National* does not, however, excuse a campaign statement that contains a threat of reprisal or force or a promise of benefit. *Hogan Transports, Inc.*, 363 NLRB No. 196, slip op. at 5 fn. 14 (2016). The statement that the Employer would not agree to any concessions in bargaining, if true, and if it occurred during the critical period, and if the context in which the statement was made implied futility of selecting the Petitioner as a bargaining representative, such a statement may warrant setting aside the election. See e.g. *Woodbridge Foam Fabricating, Inc.*, 329 NLRB 841 (1999). In my view, the audio recordings, without naming a direct witness to the event and naming who might authenticate the recording, is akin to hearsay. However, it is well settled that where the objecting party submits *prima facie* evidence demonstrating that an election was not held under the proper laboratory conditions, the Board will not hesitate to commit the necessary resources to protect its election process. *The Holladay Corporation*, 266 NLRB 621 (1983). In these circumstances, I believe the better course is to proceed to a hearing concerning the alleged statement of futility where the Petitioner will have the opportunity to present direct evidence on the issue.

Objection No. 6

With respect to Petitioner's Objection No. 6, Petitioner's offer of proof does not identify witnesses who would support the objection and summarize their testimony as required by the Board's Rules and Regulations. 29 C.F.R. 102.66(a). For this reason, I overrule Objection 6.

ORDER AND NOTICE OF HEARING

For the reasons explained above, I have directed that a hearing be held on Objections 1, 2, 4 and 5. I have overruled Objections 3 and 6.

Accordingly, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, **IT IS ORDERED** that a hearing shall be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the objections. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses. Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact and recommendations as to the disposition of the Objections 1, 2, 4 and 5.

PLEASE TAKE NOTICE that on **Wednesday, February 21, 2018, at 9:30 a.m.** and on consecutive days thereafter until concluded, at 26 Federal Plaza, Room 3614, New York, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

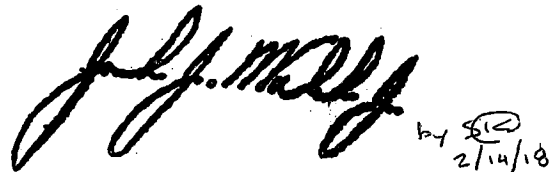
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67(c) of the Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary of the National Labor

Relations Board. The request for review must conform to the requirements of Section 102.67(d) and (e) of the Board's Rules and Regulations and must be filed by February 28, 2018.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: February 14, 2018



John J. Walsh, Jr.
Regional Director
National Labor Relations Board
Region 02
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